

Edward P. Flood  
LYONS & FLOOD, LLP  
65 West 36th Street, 7th Floor  
New York, NY 10018  
Telephone: (212) 594-2400  
Fax: (212) 594-4589  
Email: eflood@lyons-flood.com

Attorneys for Claimant,  
Ohio Machinery Company  
d/b/a Ohio CAT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Index No.: 1:12-CV-02505-LAK

In the Matter of the

**IN ADMIRALTY**

Complaint of Plaintiffs, McALLISTER  
TOWING & TRANSPORTATION CO.,  
INC. as Owner and McALLISTER  
TOWING OF NEW YORK, LLC, as Owner  
Pro Hac Vice of the Tug PATRICE  
McALLISTER for Exoneration from/or  
Limitation of Liability

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**CLAIM OF**  
**OHIO MACHINERY**  
**COMPANY d/b/a Ohio CAT**

Ohio Machinery Company d/b/a Ohio CAT (“Ohio CAT”) contends that it is not subject to personal jurisdiction in the State of New York, and the filing of this claim is not a waiver of Ohio CAT’s defense of lack of personal jurisdiction. Ohio CAT further contends that it is not necessary for it to submit a claim at this time because Ohio CAT has not been served with any litigation concerning this matter and was not given notice of this case. However, Ohio CAT is provisionally filing in the event that this Honorable Court determines that Ohio CAT was required to comply with the Court’s order of April 4, 2012.

Claimant, Ohio Machinery Company d/b/a Ohio CAT (“Ohio CAT”), for its claim against Petitioners, McAllister Towing & Transportation Co. Inc., as owner and McAllister Towing of New York, LLC, as owner pro hac vice of the tug PATRICE McALLISTER, alleges on information and belief as follows:

**JURISDICTION**

1. This is a case within the admiralty and maritime jurisdiction of the United States and the claim herein is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.
2. This Court has original jurisdiction in this action pursuant to 28 U.S.C. § 1333, because the claim involves a vessel casualty upon navigable waters of the United States.
3. The vessel involved in this action, the PATRICE McALLISTER, is located within the Southern District of New York.

**PARTIES**

4. Ohio CAT incorporates by reference Paragraphs One (1) through Three (3) as if fully set forth herein.
5. Claimant, Ohio CAT, is a corporation duly organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio.
6. Upon information and belief, McAllister Towing & Transportation Co., Inc. and McAllister Towing of New York, LLC were and still are corporations duly organized and existing under the laws of the State of Delaware, with their principal place of business in the State of New York.

7. Upon information and belief, McAllister Towing & Transportation Co., Inc. and McAllister Towing of New York, LLC claim to be either registered owners and/or charterers and/or owners pro hac vice of the tug PATRICE McALLISTER. Specifically, upon information and belief, Petitioner, McAllister Towing of New York, LLC was the charterer and/or owner pro hac vice of the tug PATRICE McALLISTER on or about March 27, 2012.
8. Upon information and belief, the PATRICE McALLISTER is a “towing vessel”, with Official Number 1082214 and a Coast Guard Documented “gross tonnage” of 149 tons.
9. Upon information and belief, Ironhead Marine, Inc., was and still is a corporation duly organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio.

#### **PROCEDURAL BACKGROUND**

10. Ohio CAT incorporates by reference Paragraphs One (1) through Nine (9) as if fully set forth herein.
11. On April 2, 2012, Petitioners filed a Complaint for Exoneration from/or Limitation of Liability, pursuant to Rule F(2) of the Supplemental Rules for Certain Admiralty and Maritime Claims.
12. On April 4, 2012, this Honorable Court gave Notice citing all persons asserting claims for damages with respect to which the Complaint seeks Exoneration from/or Limitation of Liability, and informing them to file their claim with the Clerk of this Court on or before July 2, 2012.

13. On September 09, 2012, this Court granted a Stipulation extending the deadline to file a Claim and/or Answer to August 16, 2012.
14. As a result, but without waiving its contention that there is no *in personam* jurisdiction and that it may be premature to file this claim, Ohio CAT files this Claim for Damages pursuant to Rule F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims.

### **FACTS**

15. Ohio CAT incorporates by reference Paragraphs One (1) through Fourteen (14) as if fully set forth herein.
16. On or about January 27, 2012, the tug PATRICE McALLISTER arrived at Ironhead Marine, Inc.'s shipyard in Toledo, Ohio.
17. The Petitioners, McAllister Towing & Transportation Co. Inc., and/or McAllister Towing of New York, LLC contracted Ohio CAT to conduct repairs on the tug PATRICE McALLISTER while the tug was at Ironhead Marine, Inc.'s shipyard in Toledo, Ohio.
18. Ohio CAT was not contracted to perform any inspection, work or repairs on the threaded pipes connecting the pre-lube oil pump on the tug's port engine.
19. Eduardo Escobedo, Fleet Engineer for McAllister Towing, was present at all material times at Ironhead Marine Inc.'s shipyard in Toledo, Ohio, during the tug's repairs.
20. On or about March 24, 2012, Ohio CAT completed all contracted repair work on the tug PATRICE McALLISTER and the tug departed Ironhead Marine Inc.'s shipyard in Toledo, Ohio.

21. On or about March 27, 2012, while underway, a fire reportedly occurred in the engine room of the tug PATRICE McALLISTER, resulting in personal injuries, death of a vessel crew member, and damage to the vessel.
22. The cause or contributing cause of the reported fire was a cracked threaded pipe connected to the pre-lube oil pump on the tug's port engine.

**COUNT I: INDEMNIFICATION AT LAW  
(McAllister Towing & Transportation Co. Inc. and  
McAllister Towing of New York, LLC – INDEMNIFICATION AT LAW)**

23. Ohio CAT incorporates by reference Paragraphs One (1) through Twenty-Two (22) as if fully set forth herein.
24. If Petitioners sustained any loss, damages and/or injuries from the reported incident, said loss, damages and/or injuries were caused solely by reason of the negligence, omissions and/or other culpable conduct of Petitioners, its employees, its agents and/or the tug PATRICE McALLISTER, without any culpable conduct of Ohio CAT.
25. If any verdict, or judgment or settlement is recovered against Claimant, for the loss, damages and/or injuries alleged in Petitioners' Complaint, such liability will have been brought about or caused solely by the negligence, omissions and/or other culpable conduct of the Petitioners, employees, its agents and/or the tug PATRICE McALLISTER, without any culpable conduct of Ohio CAT, and therefore, Ohio CAT is entitled to indemnity from the Petitioners, in an amount equal to the total sum of any such Judgment, together with attorneys' fees, costs and expenses incurred in defending this action.

**COUNT II: CONTRIBUTION**  
**(McAllister Towing & Transportation Co. Inc. and**  
**McAllister Towing of New York, LLC – CONTRIBUTION)**

26. Ohio CAT incorporates by reference Paragraphs One (1) through Twenty-Five (25) as if fully set forth herein.
27. If Petitioners sustained any loss, damages and/or injuries from the reported incident, said loss, damages and/or injuries were caused in whole or in part by reason of the negligence, omissions and/or other culpable conduct of Petitioners, its employees, its agents and/or the tug PATRICE McALLISTER.
28. If any verdict, or judgment or settlement is recovered against Claimant, for the loss, damages and/or injuries alleged in Petitioners' Complaint, such liability will have been brought about or caused in whole or in part by the negligence, omissions and/or other culpable conduct of Petitioners, its employees, its agents and/or the tug PATRICE McALLISTER, and therefore, Ohio CAT is entitled to contribution from Petitioners in accordance with Petitioners' fault.

WHEREFORE, the Claimant, Ohio CAT, prays that this Honorable Court:

- (a) deny Petitioners' Petition for Exoneration from/or Limitation of Liability, and dismiss Petitioners' proceeding with prejudice;
- (b) enter judgment on Count I of Claimant's Claim for Indemnification Law by Petitioners for any and all verdicts, judgments or settlements against Claimant arising out of the alleged incident;

- (c) enter Judgment on Count II of Claimant's Claim for Contribution from Petitioners for any and all verdicts, or judgments, or settlements against Claimant arising out of the alleged incident;
- (d) award costs, expenses and reasonable attorneys' fees; and
- (e) grant such other and further relief as may be just and proper.

**JURY DEMAND**

The Claimant, Ohio CAT, demands trial by jury in the State of Ohio on all issues raised in its Claim.

DATED: New York, New York  
August 16, 2012

LYONS & FLOOD, LLP  
Attorneys for Ohio Machinery Company  
d/b/a Ohio CAT

By:



Edward P. Flood  
65 West 36th Street, 7th Floor  
New York, NY 10018  
Telephone: (212) 594-2400  
Fax: (212) 594-4589  
Email: eflood@lyons-flood.com

**TO BE ADMITTED PRO HAC VICE**



Seth S. Holbrook  
238-240 Lewis Wharf  
Boston, MA 02110  
Telephone: (617) 428-1151  
Fax: (617) 428-6919  
Email: holbrook\_murphy@msn.com

**CERTIFICATE OF SERVICE**

Jon Werner, an attorney duly admitted to practice before this Honorable Court, affirms on this 16th day of August 2012, that he served true copies of Ohio Machinery Company d/b/a Ohio CAT's Claim via e-mail upon:

Freehill, Hogan & Maher, LLP  
*Attorneys for Plaintiff Mcallister Towing & Transportation Co., Inc.*  
80 Pine Street  
New York, NY 10005

Attn: John Joseph Walsh, Esq. **walsh@freehill.com**  
Mark Francis Muller, Esq. **muller@freehill.com**  
Michael Fernandez, Esq. **fernandez@freehill.com**

Sedgwick LLP  
*Attorneys for Claimant Caterpillar Inc.*  
Three Gateway Center  
Newark, NJ 07029

Attn: Shaub Bean, Esq. **shaun.bean@sedgwicklaw.com**  
Thomas D. Robertson, Esq. **thomas.robertson@sdma.com**

Latti & Anderson, L.L.P.  
*Attorneys for Claimant John A. Hoban*  
30-31 Union Wharf  
Boston, MA 02109

Attn: Carolyn M. Latti, Esq. **clatti@lattianderson.com**  
David F. Anderson, Esq. **danderson@lattianderson.com**

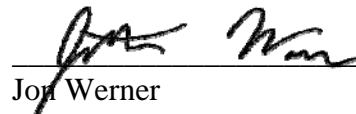
Tabak, Mellusi & Shisha  
*Attorneys for Claimant John A. Hoban*  
29 Broadway  
NEW YORK, NY 10006

Attn: Jacob Shisha, Esq. **jshisha@sealawyers.com**

Rubin, Fiorella & Friedman, L.L.P.  
*Attorneys for Claimant Ironhead Marine, Inc.*  
630 Third Avenue  
New York, NY 10017

Attn: James Edward Mercante, Esq. [jmercante@rubinfiorella.com](mailto:jmercante@rubinfiorella.com)  
Richard Gonzalez, Esq. [rgonzalez@rubinfiorella.com](mailto:rgonzalez@rubinfiorella.com)

Executed on: August 16, 2012  
New York, New York



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Jon Werner